IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL SIDE APPELLATE JURISDICTION

FIRST APPEAL NO.844 OF 2004

Regional Director,
Employees State Insurance
Corporation ... Appellant

vs.

Tulsiani Chambers Premises
Co-operative society ... Respondents

Mr.R.M.Jayakar with Miss Dimple Mehta
i/b.M/s.M.V.Jaykar & Co. for the appellant.

Mr.Rajesh Gehani for the respondents.

ALONG WITH
FIRST APPEAL NO.510 OF 2006
WITH
CIVIL APPLICATION NO.1377 OF 2006

Regional Director,
Employees State Insurance Corpn. Appellant

vs.

Agra Road Commercial Premises
Co-operative society Limited. ... Respondents

Mr.Rajesh Gehani for the appellant.

Mr.H.V.Mehta for respondent no.1.

WITH
FIRST APPEAL NO.309 OF 2006

Regional Director,
Employees State Insurance Corpn. Appellant

vs.

Dalamal Towers Premises Co-op.
Society Ltd. ... Respondents

Mr.H.V.Mehta for the appellant.

Mr.S.C.Naidu with Mr.M.M.Gujar, Mr.Sidharth Ingale and
Mr.Mikhail Behl i/b.M/s.C.R.Naidu & Co. for the
respondents.

WITH
FIRST APPEAL NO.823 OF 2006

Regional Director,

Employees State Insurance
Corporation — Appellant

vs.

Arun Chambers Commercial
Premises Co-op.Society Ltd. — Respondents

Mr.H.V.Mehta for the appellant.

Mr.S.C.Naidu with Mr.M.M.Gujar, Mr.Sidharth Ingale and Mr.Mikhail Behl i/b.M/s.C.R.Naidu & Co. for the respondents.

WITH
FIRST APPEAL NO.724 OF 2004

Employees State Insurance
Corporation — Appellant

vs.

M/s.Visvesvaraya Industries
Research & Development Centre — Respondents

Mr.R.M.Jaykar with Miss.Dimple Mehta i/b.M/s.M.V.Jayakar & Co. for the appellant.

Mr.R.R.Pai i/b.M/s.Sanjay Udeshi & Co. for the respondents.

WITH
FIRST APPEAL NO.742 of 2004

M/s.Visvesvaraya Industrial
Research & Development Centre — Appellant

vs.

Employees State Insurance Corpn. — Respondents

Mr.R.R.Pai i/b.M/s.Sanjay Udeshi & Co. for the appellant.

Mr.R.M.Jaykar with Miss.Dimple Mehta i/b.M/s.M.V.Jayakar & Co. for the respondents.

WITH
FITRST APPEAL NO.2019 OF 2006

The Regional Director,
Employees' State Insurance
Corporation, Mumbai 400013. — Appellant

vs.

Shree Nirmal Commercial Limited
Mumbai — Respondents

Mr.H.V.Mehta for the appellant.

Mr.S.C.Naidu with Mr.M.M.Gujar, Mr.Siddharth Ingale and Mr.Mikhail Behl i/b.M/s.C.R.Naidu & Co. for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 2nd November, 2007

JUDGMENT:

In **First Appeal No.844/2004**, the Appellant is a Corporation incorporated under Employees State Insurance Act, 1948 (for short, 'ESI Act'). The respondent is a co-operative society incorporated and registered under the Maharashtra Cooperative Societies Act, 1960 having its registered office at Tulsiani Chambers, 212, Nariman Point, Bombay 400 021.

2. On 2.4.1986 an Officer from the Appellant visited the respondent's premises for inspection. On 8.9.1988, the appellant sent a letter to furnish complete and correct information in respect of the respondent society. On 4.1.1989, the appellant issued a letter to the respondents reminding them of the unpaid dues. On 5.1.1989, the appellant's officer visits the respondent's premises to verify the records.

3. On 10.1.1989, the appellant issues a letter to the respondents informing them that they are covered by the ESI Act and requesting immediate compliance. On 17.1.1989 a show cause Notice by the appellants issued

to the respondents in form C-18 and provided for a personal hearing on 30.1.1989. On 14.2.1989 a Recovery Order under Section 45-A passed by the appellants against the respondents. On 20.2.1989 the respondents replied to show cause notice.

4. On 28.3.1989 an application to the ESI Court Bombay made by the respondents. On 19.12.2003 the application was allowed and the respondent society held to be not coverable under the ESI Act. Therefore the appeal.

5. In **First Appeal No.510/2006**, in or about 1980, the respondent society was covered under the provisions of Section 1(5) of the ESI Act with effect from 1.10.1980 (Prov.) on the basis of O-1 form submitted by the respondent society and the preliminary survey report dated 29.10.1980 submitted by the appellant's Inspector.

6. In 1986, the respondents society disputed the coverage by filling an application (ESI) No.81 of 1986 before the ESI Court, Mumbai. This application was dismissed for default.

7. In 1994, thereafter, the respondents society filed an application for restoration. On hearing the application, the Employees' Insurance Court directed the respondent society to deposit the amount of contribution

claimed by the appellant Corporation in the Court.

8. On 20.9.1995, the respondent society complied with the order of the ESI Court and paid the contribution amount and further informed that they do not want to proceed in the matter in the EI Court.

9. On 26.7.1996, the appellant Corporation thereafter issued a notice to the respondents society for damages amounting to Rs.44,893/- for late payment of contribution for the period 4/86 to 5/90.

10. On 18.11.1999, the appellant Corporation passed an order under section 85-B for recovery of damages. On 26.4.2000, the appellant Corporation thereafter issued a demand letter claiming interest of Rs.1,33,051.69 for late payment of contribution for the period 1.10.1980 to 31.3.1986. On 26.4.2000, the appellant Corporation thereafter issued a notice under section 85-B proposing to levy damages of Rs.1,38,710/- for late payment of contribution for the period from 1.10.1980 to 31.3.1986. On 15.5.2000/7.6.2000, the respondent society disputed the claim for levy of damages.

11. On 20.6.2000 the appellant Corporation passed an order under Section 85-B levying damages of Rs.1,38,710/-. On 12.9.2000, since the respondent

society did not pay the amount, the corporation issued two Revenue Recovery certificates for recovery of a sum of Rs.44,893/- and Rs.1,38,710/- from the Respondent society. On 4.11.2000, the respondent society thereafter filed an Application (ESI) No.33 of 2000 challenging the coverage of the society and the subsequent claims of the corporation towards damages and interest on late payment of contribution and prayed for refund of the entire amount paid by the society for the period from 1.10.1980 till date along with interest at the rate of 18% on the ground that their establishment is not covered under the provisions of the ESI Act.

12. The respondent society deposited 50% of the amount claimed by the Corporation. On 7.11.2000, the respondent society obtained ex-parte stay order against the recovery proceedings from the EI Court. The appellant Corporation was not aware of the stay order and therefore recovery has already been effected through the Bankers of the respondent society prior to the intimation dated 13.11.2000 received from the respondent society about the stay order granted by the EI Court.

13. On 20.1.2006 the Employees Insurance Court, Mumbai after hearing both the sides by its judgment and order dated 20.1.2006 declared that the respondent society is not amenable and/or coverable under the ESI Act, and set

aside and quashed the order passed under section 85-B of the Act levying the damages and interest and demanding Rs.44,893/- and Rs.1,38,710/- for the period 4/86 to 5/90 and 1.10.1980 to 31.3.1986 and further directed the corporation to refund the amount recovered through the Recovery Certificates.

14. Being aggrieved by the judgement and order dated 20.1.2006 the appellant corporation has approached this Hon'ble Court by filing the present first Appeal under Section 82 of the ESI Act praying for quashing and setting aside the said judgement and order dated 20.1.2006 passed by the Employees' Insurance Court at Mumbai in Application (ESI) No.33 of 2000.

15. In **First Appeal No.309 of 2006,** the appellant through its letter dated 23.09.1988 addressed to respondent asked to comply with the provisions of the ESI Act from September, 1988. The respondents filed an application under section 75 read with Section 1(5) of the ESI Act. The respondents therein asked for the relief of non coverage of respondent's cooperative Society under the purview of the said Act. The Trial Court vide its order dated 23.04.2002, has allowed the application.

16. In **First Appeal No.823 of 2006,** on 10.06.1993 the

Insurance Inspector visited the Respondent society, verified the records and provisionally covered the Society under the ESI Act with effect from 1.4.1991, and directed the respondents to start compliance. On 15.09.1993 the appellant corporation communicated the coverage of the respondents society with effect from 1.4.1991 and directed to pay the contribution. The respondents paid a sum of Rs.3,22,269/- towards the contribution for the period from 1.1.1990 to 31.7.1998. The respondents disputed the coverage of the society in view of the judgement of the Hon'ble Bombay High Court in the matter of ESI Corporation vs. Adhyaru Industrial Premises Co-op. Society Ltd., and requested the appellant to withdraw the communication dated 15.09.1993. On 1.9.1998 the appellant informed the respondents that their society stands decovered and henceforth they are not required to comply with the provisions of the ESI Act. On 23.11.1998 the respondents addressed a notice to the appellant to refund the amount of Rs.3,22,269/- towards contribution paid by the respondents. On 24.12.1998, the appellant informed the respondents that the employees of the respondents have availed the benefits provided under the Act during the period of coverage and therefore the respondents are not eligible for refund of the contribution. Respondents challenged the decision of the Corporation by filing an application (ESI) No.22 of

2001 before the Employees' Insurance Court, Mumbai, claiming refund of the contribution amount together with interest at the rate of 15%. On 25.10.2005, the Employees' Insurance Court after hearing both the sides directed the Corporation to refund the amount of Rs.3,22,269/- with interest at the rate of 6% p.a. from the date of filing the Application in addition to the cost of Rs.2,000/-. Being aggrieved by the judgement and order dated 15.10.2005 the appellant begs to approach this Hon'ble Court by filing the present First Appeal under Section 82 of the ESI Act praying for quashing and setting aside the said judgment and order dated 15.10.2005 passed by the Employees' Insurance Court at Mumbai in Application (ESI) No.22 of 2001.

17. In **First Appeal No.724/2004,** On 26.6.1970, the respondents incorporated under the Companies Act. On 18.9.1978, notification under section 1(5) of the E.S.I. Act. On 5.6.1990, letter to the respondents from the appellant asking to submit form C/1 and also a code number was provided. On 29.8.1990, reply by the respondents claiming that the ESI Act is not applicable.

18. On 7.11.1990, notice in form C/11 issued by the appellants to the respondents, whereby they were informed that they were covered under Section 1(5) of ESI Act as per Notification.

19. On 17.1.1991, an application was filed in ESI Court by respondents for various declarations. On 5.3.2004, the judgement was passed partly allowing the application. The Notice dated 7.11.1990 was set aside.

20. In **First Appeal No.742/2004,** the appellant is a company incorporated with a license under section 25 of the Companies Act, 1956. The appellant is basically a scientific research organization to organize, sponsor, promote, conduct or undertake scientific research in any area or field including research and development in India trade or industry. The appellant has established world Trade Centre at Mumbai as an object of public utility not involving carrying on any activity for profit.

21. The administration management is run by four members which are nominated by the Government of Maharashtra of which one is Industry Minister and Three Secretaries of the Urban Development Department. The appellant constructed a building known as World Trade Center, being the owner of the building Appellant looks after the maintenance and upkeep of the building. The appellant recovers the charges incurred by the appellant towards the charges of upkeep of building promise various members/lesdsees. On 7.11.1990 , the respondent

Corporation issued a notice to the appellant directing the appellant to cover the establishment of the appellant under the Employees State Insurance Act stating that the establishment of the appellant would fall within the ambit of "shop" brought within the purview of ESI Act by; Notification dated 18.09.1978 issued by the State of Maharashtra under Section 1(5) of the ESI Act.

22. The appellant inform the Regional Director of the respondent Corporation that the appellant cannot cover under the provisions of ESI Act in as much as the dominant activities of the appellant is research activity which would not constitute appellant a shop for the purpose of ESI Act.

23. On 17.01.1991, therefore, they filed an application under section 75 of the ESI Act being Application (ES) No.18 of 1991 before the Employees Insurance Court, Mumbai. The respondent corporation opposed the said application by filing its written statement. On 05.03.2004 after hearing the parties the learned Judge of the Employees Insurance Court, Mumbai was pleased to partly allowed the said application.

24. In **First Appeal No.2019/2006,** on 20.10.1982 the Insurance Inspector of the Corporation visited the

respondents establishment for survey.

25. On 29.12.1984, the Corporation informed the respondents that on the basis of the inspection report the respondents company was covered under the provisions of Section 1(5) of the ESI Act, w.e.f. 12-11-1978, and to comply with the provisions of the said Act.

26. On 18.1.1985, the respondents informed the Corporation that their establishment is not a shop as defined in the Bombay Shops and Establishments Act, 1948. On 23.08.1985 the Corporation requested the respondents to produce the records for verification at the next visit of the Inspector on 25-11-1986. On 25-11-1986, the Insurance Inspector visited the premises and verified the records of the respondents. On 8.09.1988 the Corporation informed the respondents that on the basis of the inspection report, their establishment is covered provisionally under Section 1(5) of the ESI Act, w.e.f. 1.11.1983. On 22-02-1989, the Corporation informed the respondents to pay the contribution for the period from 1-11-1983 to 30-9-1988.

27. On 07-04-1989, the respondents challenged the letter dated 8.9.1988 before the Employees Insurance Court, Mumbai, by filing Application (ESI) No.65/89 which was allowed. Therefore, the present appeal.

28. As common points are involved in all these appeals under Section 82 of the ESI Act, 1948. filed by the appellant-ESIC as well as the respondents-society, therefore, by consent heard together & decided by this common Judgment.

29. The basic points urged by the appellants Corporation are:

a) The most of the Societies and in some cases commercial limited companies engaged in respect of cleaning, sweeping, repairs, maintaining gardens, maintaining and sweeping of compound, pumping water, electrical services, lift services, security guards for the building/premises and other common services they are engaging/employing certain employees. Therefore, these employees are covered under Section 1(5) of the ESI Act.

b) The societies or companies therefore ought to have paid the contribution (as provided under Section 40 of the ESI Act) treating the establishment of the respondents/societies as a "shop" within the meaning of the ESI Act.

c) The further submission is that the employees employed by the respondents/societies are rendering economic

services and those services are in demand and, therefore, such respondents fall within the ambit of the meaning of "shop" notified in the State notification, specifically based upon the ratio laid down by the Hon'ble Supreme Court in the matter of **Cochin Shipping Companies vs. ESIC, reported in 1993 II LLJ 795 and ESIC vs. R.K.Swamy, reported in 1993 I LLJ page 51.**

d) The further submission therefore was that the word "shop" though not defined in the ESI Act but needs to be given wider sense and wider meaning as defined in the Bombay Shops and Establishments Act.

30. It is prayed that the orders passed by the Employees Insurance Court, Mumbai be quashed and set aside.

31. Principally on an application filed by the societies under Section 75 of the ESI Act, the Employees Insurance Court framed the issue as under:

Issue no.1: Does the applicant(society)/company prove that their establishment is not amenable to the provisions of ESI Act as shop under item No.III of Government of Maharashtra Notification dated 18.9.1978 and answered in positive and thereby allowed the application by holding that such society/company cannot

be viewed as shop for the purposes of ESI Act. In very few matter, as the order was otherwise, the society/companies have preferred the appeals.

32. The basic submissions of the respondents/societies are as under:

"(1) The respondents are a Co-operative Society incorporated and registered under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Societies Act') and have their Registered Office as shown in the cause title at the above address. A co-operative housing society is classified into three categories for the purpose of the Societies Act, viz. Commercial, Residential or Industrial. It does not matter as to the purpose for which the premises is put to use as long as the members form a Society for the purpose of acquiring a premises. The premises is put to use by the member and not by the Society. The Society only allots the premises to the member. Irrespective of use of premises where 10 or more members come together and organize themselves to form a Society for the purpose of constructing/purchasing premises then such a Society is registered as a "Co-operative society"

for the purpose of the Societies Act and Rules framed thereunder.

(2) It is not in dispute that the Society owns the building which has various units. The units in turn are allotted to individual members. The society is under a statutory duty to manage, administer and maintain the said building. The members of the Society elect a Committee which functions under the name and style of "Managing Committee" of the Society. The Managing Committee is responsible for ensuring that property taxes water tax and common electricity charges are paid to the concerned authorities within the stipulated time. To facilitate this payment each member is required to contribute, within the time prescribed by the byelaws of the society, his share of contribution in the aforesaid statutory outgoings. In addition to the above collection the Managing Committee ensures maintenance of the building and also the amenities such as lift etc. The facilities generally are to ensure that the Society building and premises are maintained. Towards this end services of a sweeper is engaged generally on part time basis. For the security of the building watchmen are engaged, who also in most of the societies attend to pumping of water and switching

on and off common lights and in case the building has a lift, a liftman is engaged. Salary/wages to these employees are collected from each member under the head "Society Maintenance Charges". It may be stated here that in such a Cooperative society "Maintenance Charges" collected are in accordance with its bye-laws. The Managing Committee is required to govern itself in accordance with the byelaws of the Society. The respondents have relied upon their byelaws in the original proceedings which are on record."

33. The learned counsel for the appellants have strongly relied on the following citations:

(1) New India Maritime Agenciexs Pvt.Ltd. vs. State of Tamil Nadu reported in 1987 II CLR 590 Madras High Court Division Bench;

(2) Hindu Jea Band vs. ESIC reported in 1987 I LLJ 502 SC

(3) Kirloskar Consultants Pvt.Ltd. vs. ESIC reported in 2000 II LLJ 1657.

(4) Kunnathunad C.S.Co-op. Socy vs. Reg. Director, ESI Corporation, 1989 1 CLR 516 (Ker.D.B.).

(5) Madras Govt. Servants Co-op. Socy. Ltd. vs. ESIC, 1997 I LLJ 606 (Madras).

(6) Rasid Maskati & Ors. vs. Abbas Ali Hussaini M., 1999 III LLJ (Suppl) 331 (Bom.D.B.);

(7) The Regional, ESI Corporation vs. The Taj Textiles Industrial Co.op. Socy., 1980 LIC 1301;

(8) Karnani Properties Ltd. v/s. St. of West Bengal, 1994 III LLJ (Suppl.) 378;

(9) Bangalore Water Supply & Sewerage Board vs. A. Rajappa & ors., 1978 Lab IC 467 (SC FB);

(10) ESIC v. Hyderabad Race Club, 2004 (6) SCC 191;

(11) TISCO vs. Chief Inspector Officer & ors., 2005 (9) SCC 605;

(12) Tuticorin Thermal Station-Industrial Co-operative Society Ltd., Tuticorin vs. Deputy Regional Director, Sub-Regional Office, ESI Corporation, Madurai & ors., 2005-II-LLJ-398.

(13) Southern Agencies vs. AP ESIC, 2001 - I-LLJ 161;

(14) Kirloskar Consultants Ltd. vs. ESIC, 2001 (1) SCC 57;

(15) Cochin Shiping Co. vs. ESI Corporation, 1993-II-LLJ-795 (SC);

(16) ESIC vs. R.K.Swami, AIR 1994 SC 1154;

(17) ESIC vs. Indian Sewing Machine Co. Ltd., 1995(1) Bom. CR 342.

34. In answer to that the learned counsel for the respondents/society have relied on the following citations and documents:

(1) First Appeal No.508/1990 dt.16-03-1995 -ESI Corporation vs. Adhyaru Industries (S.B.)

(2) L.P.A. Stamp No.12742/1995 dt.19-11-1996, ESI Corporation vs. Adhyaru Industries (D.B.)

(3) Dainik Deshdut & ors. vs. Employees State Insurance Corporation, 1995-I CLR-446;

(4) Oral order dated 7th June, 2005 by D.G.Deshpande,J. in F.A.No.443/2005-The Regional Director, ESIC vs. Raheja Centre Premises Co.op. Society Ltd.

(5) Management of SOM Vihar Apartment Owners Hsg. Maintenance Society Ltd. and Workmen c/o.Indian Engineering & General Mazdoor; 2001-I-LLJ-1413.

(6) Asstt. Commissioner (Intelligence) vs. Nandanam Construction Co. , 1999(8) SCC 69;

(7) S.P. Boarkar & ors., vs. N.T.C. (S.M.) Ltd. & ors., 2001-I-LLJ-1415;

(8) Kiran Industrial Premises Co-op. Society Ltd. vs. Janata Kamgar Union & ors., 2001-I-CLR-1046;

(9) Sundarajas Kanyalal Bhathija vs. Collector, Thane, AIR 1991 SC 1893;

(10) Maharashtra Rajya Suraksha Rakshak & General Kamgar Union vs. Security Guard's Board for Greater Bombay & Thane & ors., AIR 2007(2) R-146;

(11) Backbay Premises Co-op. Society Ltd. vs. Union of India & ors., 1997-II CLR 1075;

35. Admittedly, there is a notification, Exhibit "A" issued by the Urban Development Public Health Department, Mantralaya, Bombay under Section 1(5) of the Employees State Insurance Act, 1948 (ESI Act) dated 18th September, 1978, wherein the Central Government with effect from 12.11.1978 has extended all the provisions of the ESI Act to the establishments, mentioned in column "1" and the area specified in column "2" of the Schedule. The relevant portion of item No.3 is as under:

> "3. The following establishments wherein twenty or more employees are employed or were employed for wages on any day of the proceeding twelve months, namely,
>
> i) hotels;
>
> ii) restaurants;
>
> iii) shop;
>
> iv) cinemas, including preview theatres, and newspaper establishments as defined in section (2)(d) of the working Journalists (Condition of Service) and Miscellaneous provisions Act, 1955 (45 of 1955)."

36. Admittedly, the societies or the companies like the respondents/societies are not mentioned in the said item. Therefore, such societies cannot be treated as establishments even though twenty or more employees employed or were employed for wages on any day of the proceeding twelve months, as contemplated under the ESI Act. Therefore, unless extended and made applicable specifically by notification and/or by any other mode, the society and/or such companies cannot be treated as an establishment as defined under the ESI Act. Therefore, on the face of record, the respondent/societies/companies does not fall within the purview of the said notification and, therefore, the case that respondents/societies are amenable to the provisions of the ESI Act is unacceptable.

37. Admittedly, this Court in First Appeal No.508/1990 dated 16th March, 1995-ESI Corporation vs. Adhyaru Industrial Premises Cooperative Society Ltd., a judgment of Single Judge, based upon the other judgements held that the society was not engaged in any commercial activities and it was operating on no profit or no loss basis; and as it was formed to look after the interest of its members and as the only source of its income was the contributions collected from its members, therefore, refused to extend the provisions of ESI Act to such societies. This judgment was subsequently upheld by the

Division Bench consisting of the then Chief Justice Shri M.B.Shah and Justice A. V. Savant in L.P.A. (Stamp) No.12742 of 1995 by a judgement dated 19.1.1996.

38. Lastly, in First Appeal No.443/2005-**The Regional Director, ESIC vs. Raheja Centre Premises Co-operative Society Ltd.,** another Single judge of this Court by the judgement dated 7th June, 2005, in the appeal filed by the appellants in Insurance Corporation based upon the above judgements dismissed the appeal, by relying on, apart from the above citation, on **1995-I CLR 446-Dainik Deshdoot & ors. vs. The Employees' State Insurance Corporation & ors.** and held that no Second Appeal would lie in the matter unless it involves substantial question of law. In the result, therefore, in view of the above judgements, M/s.Adhyaru and the Regional Director Employees (supra), the fact remained that there is no question of law involved in the matter. As on the similar point, this Court has already concluded the issue against the appellant-Corporation. The issues & facts are identical. There is nothing on record to show that there are any judgements other than these to support the case of the appellants. There is nothing on record shown or pointed out that any challenge were raised against these judgements. These judgements, therefore, become final & binding to this Court. Therefore, without going further into the merits of the

matter, in all these cases/appeals as there are no substantial questions of law involved, all these appeals are liable to be dismissed also on the ground that there are no questions of law involved in the matter.

39. The learned counsel for the appellants, however, based upon the above cited Supreme Court judgments re-submitted that the scope of the expression "shop" has been expanded by various judgements where in a premises/building in economic activity if carried on that premises will have to be held as "shop" for the purposes of the ESI Act. The further submission is that the meaning of "shop" as per the Bombay Shops and Establishments Act should be extended to such societies.

40. I am not accepting this submission for simple reason that there is no question of giving wider meaning and scope to the clear word "shop" as mentioned in the notification referred above. The State, if wanted to include such societies or companies within the ambit of ESI Act it would have provided specifically accordingly. There is no question of extending the provisions of ESI Act by implication specifically when there is a clear notification dealing with the various establishment as referred in the said notification which has been in existence since 18th September, 1978.

41. Apart from that this Court in view of the above judgements have already held and observed that such societies are not amenable to the ESI Act & based upon also the said notification itself. Therefore, on similar facts and circumstances, such extension as sought by the ESI authorities is therefore unacceptable.

42. The most of the cases in hand are also of the period ranging from 1989 onwards. Therefore, the appellants Corporation though fully aware of the decisions cited above of the year 1995/1996 and 2005, covering the issues, now re-agitating the same by these appeals. The above Judgements (Adhyaru) & (Raheja Centre) (supra), unless shows otherwise are the binding judgements and certainly to the ESI Court.

43. The authorities as relied on by the appellants -Corporation are also in no way similar on facts and circumstances. In the following cases, the facts are distinct and distinguishable:

(a) The case of Kunnathunad (supra) was a case of the members of the Industrial Co-operative Society who works in the premises of the society for wages paid by the societies and, therefore, there was clear commercial activities of the society. The extension of the ESI Act to the society and its members was therefore right.

(b) In Madras Government Servants Co-operative Society Ltd. (supra), the cooperative society was engaged in financing it members for their use and recovering the same with interest and, therefore, rightly held to be a "shop" within the coverage of ESI Act.

(c) In Rasheed A. Maskati (supra), the respondent was employed in a building of trust having commercial and systematic activities. The payment of wages, therefore, by Competent Authority held to be valid and legal by this Court.

(d) In The Taj Textiles Industrial Co-op. Society Ltd. (supra), the shareholders/members were running services for hired groups and passengers.

(e) In Karnani Properties Ltd. (supra), the Company who own flats was letting out the same. Therefore, the workers were employed for maintaining the flats and giving services falls within the definition of "Industry" as contemplated under the Industrial Disputes Act.

(f) The Apex Court decision in Bangalore Water Supply & Sewerage Board (supra) was available when this Court, after considering the material on record, held that such

societies are not covered by the provisions of the ESI Act and the position remained the same till the decision dated 7th June, 2005 (Raheja Centre Premises (supra).

(g) In Hyderabad Race Club (supra), the Apex Court was dealing with the "establishment" in reference to "Race Club". The Race Club is a commercial activity. Therefore, falls within the ambit of the ESI Act. There is no such activities recorded with reference to the society/companies. Therefore, this judgement in no way supports the case.

(h) Tata Iron & Steel Co.Ltd. (supra) was a case under Bihar Shops and Establishments Act, 1953 in reference to a charitable hospital. Therefore, the activities which are frequent, continuous and relating to business, whether it earns profit or not falls within the ambit of the word "establishment".

(i) In Tuticorin Thermal Station-Industrial Co-operative Society Ltd. (supra), the issue was about a cooperative society supplying employees as contract labour, rightly held to contribute under ESI Act being commercial activities of the society.

(j) In Southern Agencies (supra), the appellant-company in that case was supervising and controlling the sales

of all branches and, therefore, held that the administrative office in Rajamundry is nothing but controlling office thus falls within the ambit of "shop" as there was admittedly economic activities carried on leading to sale and purpose and take shares of their income.

(k) In Kirloskar Consultants Ltd. (supra), Premises where consultancy services were provided to the customers in respect of industrial, technical and management activities including preparation of project reports by engaging the services of architects, engineers and other experts, rightly held to cover the word "shop" for the purpose of ESI Act.

(l) In Cochin Shopping Co. (supra), the appellant in that case was carrying on stevedoring, clearing and forwarding operations. These services form part of Carriers Job. Therefore that was a shop carrying on systematic, economic and commercial activity. Therefore, held to be "shop" within the meaning of ESI Act.

(m) In R.K.Swamy (supra), the premises of advertising agency held to be a "shop'. Advertising agency's activities are definitely commercial activities.

(n) In Indian Sewing Machine Co.Ltd. (supra), this Court has considered the warehouses, shops connected with business of sale of sewing machines centrally controlled by Head Office as a "shop" as contemplated under the ESI Act.

44. As noted, in all the above matters, the facts and circumstances are totally distinct and distinguishable and not at all identical and/or similar with the present facts. On the contrary the judgement given by this Court in Raheja Centre Co-operative Society (supra) referring to earlier judgement of this Court which was confirmed by the Division Bench in L.P.A., dealt with the issue directly and answered accordingly against the Corporation in favour of the society. In view of this, there is no question of extending the meaning of "shop" or "establishment" as submitted to cover all the societies/such companies within the ambit of ESI Act.

45. Apart from this, the above decision of this Court in First Appeal No.508/1990 dated 16th March, 1995 (M/s.Adhyaru Industrial Premises Cooperative society Ltd. (supra) based upon the ESI vs. M/s.R.K.Swamy reported in 1994 I LLJ 636 and Hindu Jea Band vs. Regional Director, ESIC reported in AIR 1987 SC 116, came to the conclusion that a cooperative society was not a "shop" and that the notification dated 18th

September, 1978 was not applicable to the said society. The said judgement was confirmed by Order dated 19th January, 1996 by the Division Bench of this Court in L.P.A. and held that a society similar to the respondent-society would not be a "shop". This judgement therefore given by this Court is binding on all the ESI Courts as well as this Court and specially to a Single Judge. There is no change in circumstances or additional factor to disturb the judgement which has been in the field for more than 11 years and now followed by a Single Judge of this Court in Raheja Centre Premises (supra) by order dated 7th June, 2005. On this ground, there is no reason to interfere with the settled decision now at the instance of the appellants who were fully aware of those judgements and decisions throughout. The Corporation is also therefore bound by such judgements and has to govern accordingly.

46. There is nothing on record to suggest the activities of the societies is economic activities and/or leading to sale or purchase and/or giving or taking of goods and/or having nexus with sale or purchase of the goods.

47. The intention of the Legislature is clear from the statements of objects and reasons which stipulates that the ESI Act has been enacted to provide certain benefits

to workmen engaged in industrial or commercial undertakings or agriculture based industries. The notification so issued under Section 1(5) of the ESI Act provides the word "shop" and not the "society". The shops and societies are two different and distinct meaning in all respects. Such societies cannot be taken under the umbrella of the word "shop" to extend the provisions of ESI Act.

48. In First Appeal No.724/2004 the respondent and appellant in First Appeal No.742/2004 (Visvesvaraya Industries Research & Development Centre), though they are registered company under Section 25 of the Companies Act, 1956 they are performing the function similar and akin to cooperative housing society such as collecting maintenance, charges from the lessee members to whom the premises have been allotted on rent. Thus, such companies cannot be said to be a "shop" within the meaning of the said notification in the facts & circumstances of the case in view of the above binding judgments.

49. The ESI Court, after assessing the material as well as evidence on record, based upon the decision given by this Court in M/s.Adhrayu Premises Cooperative Housing Society (supra) rightly allowed the application of the society against the appellant-respondent. There is no

question of law involved.

50. In this background it is material to consider such activities and status of such society under other laws.

(A) Industrial Disputes Act, 1947: The status of a cooperative society under Industrial Disputes Act, 1947 was subject matter of decision of the Apex Court in the case of Management of SOM Vihar Apartment Owners Housing Maintenance Society Ltd. versus Workmen c/o.Indian Engineering and General Mazdoor, 2001 LLR 599. The Honourable Apex Court has held the society cannot be held to be Industry or shop and at the highest it can be stated that employees of the society are rendering personal services to the members of the society.

(B) Minimum Wages Act, 1948.: A Single Bench of this High Court was required to consider whether a cooperative society owning industrial units or galas wherein members or shareholders are carrying on commercial or trading activities in the said units would make the society amenable to Minimum Wages Act, 1948 in so far as employees of the Society are concerned. This was considered in the case of Kiran Industrial Premises Cooperative Society Ltd. vs. Janata Kamgar Union, 2001 (1) C.L.R. 1046, it has been held that a society, in which its members carry on commercial and trading

activities, cannot be treated or said to be engaged in any commercial venture or business, trade or profession and does not even amount to "commercial establishment" much less a "shop".

(C) Security Guards Act: In the case of - Maharashtra Rajya Suraksha Rakshak & Gen. Kamgar Union vs. Security Guards Board for Greater Bombay & Thane district, 2007 (2) AIR Bom. R. 146 (DB) it has been held that a cooperative housing society having residential and commercial tenements is not an establishment if it is not carrying on business, trade or profession even though some of its members are carrying on business, trade or profession in their premises. Relevant test is whether the society is carrying on business, trade or profession. Mere rendering of Service by Society to its members cannot be said to be either business or trade or commercial activity.

(D) Provident Fund & Misc. Provisions Act, 1952: In the case of Backbay Premiss Co-operative society Ltd. vs. Union of India, 1997 II CLR 1075 it was held that the petitioner society consisting of various premises, which are used for business purpose by the members, are required to collect maintenance charges and statutory charges from its members under the provisions of

Co-operative Societies Act and the Bye laws. Such activity of the society would not amount to commercial or business activity. The petitioner society was hence not covered by the Act even under Section 1(3)(b) of the PF Act.

(E) Bombay Shops & Establishments Act, 1948 : A demi official letter of Under Secretary to Government of Maharashtra addressed to the Mumbai District Cooperative Housing Federation Ltd. (page 50 of respondent's compilation) clearly states that a cooperative society is neither an establishment which carries on any business, trade or profession nor a society registered under Societies Registration Act. It is, therefore, not a commercial establishment as defined under the Bombay Shops & Establishments Act and hence it will not come within the purview of the Bombay Shops & Establishment Act.

51. The respondents-societies render services to the members are domestic in nature like operating lifts, water supply, electricity, cleaning, sweeping and security. These services are essential for the very existence and security of its members and society building. These services therefore are in the nature of personal services and cannot be said to be economic activity. Therefore such services as contended by

itself would not make the respondents-societies a "shop".

52. Taking all this into account, the appeals filed by the Corporation are dismissed i.e. First Appeal Nos.844/2004, 510/2006, 309/2006 823/2006, 724/2004 and 2019/2006. The appeals filed by the societies are allowed i.e. First Appeal No.742/2004. The impugned orders in those appeals of the societies are quashed and set aside as prayed. C.A. No.1377/2006 in First Appeal No.510/2006 also stands disposed of accordingly.

53. No order as to costs.

[ANOOP V. MOHTA,J.]